

REMARKS

Claims 1-17 were pending. The Examiner rejected all of these claims under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,688,422 to *Fuesser, et al.* (hereinafter "*Fuesser*"). Applicant disagrees with the basis for this rejection and believes each of these claims to be in condition for allowance.

Specifically, the Examiner stated that the changes made to 35 U.S.C. §102(e) by the American Inventors Protection Act of 1999 and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply. Accordingly, the prior art date of references is determined under 35 U.S.C. §102(e) prior to the amendments by the AIPA (i.e., pre-AIPA 35 U.S.C. §102(e)). However, as provided by MPEP 76.02(f)(1), for U.S. patents, the references are applied under 35 U.S.C. §102(e) as of the earlier of the date of completion of the requirements of 35 U.S.C. §371(c)(1), (2) and (4) or the filing date of the later-filed U.S. application that claimed the benefit of the international application. The filing date of the later-filed U.S. application claiming the benefit of the international application for *Fuesser* is April 12, 2002. The Examiner has not offered a date for the completion of the requirements of 35 U.S.C. §371 or an explanation of how this date precedes the provisional filing date to which the present non-provisional application claims priority. The provisional application filing date of September 20, 2000 certainly is prior to the filing date of the U.S. application for *Fuesser*, which was filed on April 12, 2002.

Even assuming that *Fuesser* has an earlier priority date, it does not read on the claims as the Examiner suggests. Specifically, claim 1 requires, “at least two modes of noise attenuation signal generation based on engine data.” The Examiner contends that this feature is taught by *Fuesser* at column 4, lines 15-46. However, while there is mention of multiple ways in which noise may be attenuated, there is no mention of separate and distinct modes of operation of noise attenuation signal generation. In addition, as further required by claim 1, the selection between at least two of these modes must be based on engine data. Again, there is no indication that there are different modes, much less modes selected by a control unit based on engine data. For this reason, claim 1 and its dependents, claims 2-7, stand in condition for allowance.

Claim 2 requires, “said engine data comprises engine load data and engine speed data.” Thus, in relation to claim 1, this data must be used for the selection between the two modes of noise attenuation. There is no such disclosure in the cited portions of *Fuesser*. For this reason, claim 2 is in condition for allowance.

Claim 3 requires, “a memory unit storing driving mode information that at least assists said control unit in the selection of one of said at least two modes of noise attenuation signal generation.” There is no such feature of a memory unit storing driving mode information in *Fuesser*. Therefore, claim 3 is in condition for allowance.

Claim 4 requires, “said driving load information comprises data relating at least one mode of noise attenuation to said engine speed data.” Again, this feature is not shown. There is no relation of at least one mode of noise attenuation with engine speed

and, certainly, this information is not stored on a memory unit as required by claim 3 upon which claim 4 depends.

Claim 5 requires, “said driving mode information comprises data relating at least one mode of noise attenuation to said engine load data.” Again, this feature is not shown by *Fuesser*. Therefore, claim 5 is in condition for allowance.

Claim 6 requires, “said driving mode information comprises data relating at least one mode of noise attenuation to said engine load data and said engine speed data.” Again, this feature is not shown by *Fuesser*. A mode of noise attenuation is not related to either engine mode data or engine speed data or their combination as required by claim 6. Furthermore, this information is not stored on a memory unit as required by claim 3 upon which claim 6 depends.

Claim 7 requires one of said at least two driving modes comprises a sport-driving mode and a normal driving mode. Again, *Fuesser* does not teach two driving modes together from which a selection is made between the two. For this reason, claim 7 is in condition for allowance.

Independent claim 8 requires, “a memory unit storing driving mode information that assists said control unit in the selection of one of said at least two modes of noise attenuation signal generation.” Claim 8 further requires that the “said control unit selects one of said at least two modes of noise attenuation signal generation based on a comparison of said engine speed data and said engine load data and data stored in said memory unit.” As explained above, these features are not shown by *Fuesser*. Therefore, claim 8 and its dependents, claims 9-12, stand in condition for allowance.

Claim 9 requires, “the driving mode information comprises data relating at least one mode of noise attenuation to said engine speed data.” Again, as mentioned before, this feature is not shown by *Fuesser*.

Claim 10 requires, “said driving mode information comprises data relating at least one mode of noise attenuation to said engine load data.” This feature is not shown by *Fuesser* as explained above. Therefore, claim 10 is in condition for allowance.

Claim 11 requires, “said driving mode information comprises data relating at least one mode of noise attenuation to said engine load data and said engine speed data.” This feature is not shown by *Fuesser*. Therefore, claim 11 is in condition for allowance.

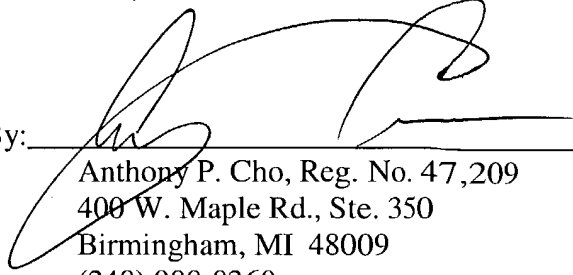
Claim 12 requires at least two driving modes comprises a sport-driving mode and a normal driving mode. As explained above, claim 12 is not anticipated by *Fuesser*. Therefore, claim 12 is in condition for allowance.

Independent claim 13 requires in pertinent part, “selecting one of at least two modes of noise attenuation signal generation based on the determined engine speed data and the engine mode data.” There is no selection between two modes of noise attenuation. Therefore, claim 13 and its dependents, claims 14-17, stand in condition for allowance. For the reasons set forth above, claims 14-17 are also separately allowable. Based on the foregoing, Applicant requests the Examiner allow claims 1-17.

Applicant believes that no additional fees are necessary, however, the Commissioner is authorized to charge Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds for any additional fees or credit the account for any overpayment.

Respectfully submitted,

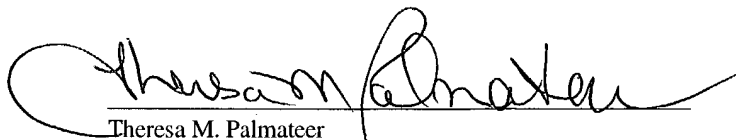
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CERTIFICATE OF MAILING

I hereby certify that the enclosed Response is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on November 24, 2004.


Theresa M. Palmateer

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